REMARKS

Claims 32-38 are pending in this application. Reconsideration of the pending claims is respectfully requested.

Claims 32, 33, and 36-38 have been rejected under 35 U.S.C. §102(e) as being anticipated by Suzuki et al. (US 6,816,964). Claims 34 and 35 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Suzuki et al. in view of Official Notice.

Rejections under 35 U.S.C. §102(e)

Independent claim 32 recites a method for executing commands in a system. Claim 32 is not anticipated by Suzuki et al. because the reference does not teach certain components of the system recited by the claim, and also does not teach certain limitations of the method.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). During patent examination, the pending claims must be "given their broadest *reasonable* interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000, emphasis added). This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc).

As recited by the preamble and limitations of the method, the system of claim 32 includes a database, a plurality of devices remote from the database, and a gateway that provides a communications interface between the remote devices and the database. One limitation of the method comprises storing a queue in the database. It is Applicants' understanding that the Examiner has interpreted the hard disk drive (HDD) 105 of Suzuki et al. to be a database, the

clients 200 to be a plurality of devices, the communication control board 107 to be a communications interface, and the script file 11 to be a queue. As an initial point, Applicants disagree with the characterization of the HDD 105 as a database and the script file 11 as a queue.

Regarding the term "database," for the claim to be given its broadest *reasonable* interpretation consistent with the specification, "database" must be given its plain meaning unless Applicants has provided a clear definition in the specification. The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. "Database" is a term of art in the computer industry. The meaning that the term "database" would have to a person of ordinary skill in the computer art at the time of the invention is shown by the definition of "database" provided by the <u>Microsoft Computer Dictionary</u>, 5th Edition, 2002, namely, "[a] file composed of records, each containing fields together with a set of operations for searching, sorting, recombining, and other functions." A "file" is further defined by the <u>Microsoft Computer Dictionary</u>, 5th Edition, 2002, as, "[a] complete, named collection of information, such as a program, a set of data used by a program, or a user created document."

On the other hand, a hard disk is defined by the <u>Microsoft Computer Dictionary</u>, 5th Edition, 2002, as, "[a] device containing one or more inflexible platters coated with material in which data can be recorded magnetically..." Since a database is defined as a type of file, and a device containing one or more inflexible platters is not a file, it should be clear that the broadest reasonable interpretation of "database" would not include a hard disk drive.

Applicants acknowledge that a hard disk drive may be used to store a database, but that does not necessarily mean that every hard disk drive must include a database, and the Examiner has not explicitly made the argument that the HDD 105 of <u>Suzuki et al.</u> inherently includes a database. Per MPEP §2112, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic" citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Further, "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic

necessarily flows from the teachings of the applied prior art" citing Ex *parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Since the HDD 105 is not expressly a database, and the Examiner has not provided a basis in fact and/or technical reasoning to reasonably support the determination that the HDD 105 inherently includes a database, claim 32 is not anticipated by Suzuki et al.

Turning next to the term "queue," the Examiner has interpreted the script file 11 of Suzuki et al. as reading on a queue containing a sequence of commands to be executed. Applicants disagree with the characterization of the script file 11 as a queue. "Queue" is also a term of art in the computer industry. The meaning that the term "queue" would have to a person of ordinary skill in the computer art at the time of the invention is shown by the definition of "queue" provided by the Microsoft Computer Dictionary, 5th Edition, 2002, namely, "[a] multi-element data structure from which (by strict definition) elements can be removed only in the same order in which they were inserted; that is, it follows a first in, first out (FIFO) constraint. There are also several types of queues in which removal is based on factors other than order of insertion-for example, some priority value assigned to each element."

However, a script file 11 of Suzuki et al. is "a control file, storing therein an execution script S, i.e. execution control information, which prescribes an execution process of installation into the client 200" (col. 6 lines 53-56). Since an execution script is not a multi-element data structure from which elements are removed according to order inserted (or another factor), the broadest reasonable interpretation of "queue" would not include the execution script of Suzuki et al. Since the script file 11 is not expressly or inherently a queue, claim 32 is not anticipated by Suzuki et al.

Turning next to the specific limitations of the method of claim 32, as provided above, claim 32 requires storing a queue in a database. Even if, *arguendo*, the script file 11 is viewed as a queue, and the HDD 105 inherently includes a database, Suzuki et al. does not teach storing the script file 11 in such an inherent database. In other words, even if HDD 105 inherently includes a database, it does not necessarily follow that the database must comprise all data stored to the HDD 105. It is possible that that HDD 105 includes a database, but that the script file 11 is

stored outside of the database. Since Suzuki et al. does not expressly or inherently teach that the script file 11 must be stored in a database, claim 32 is not anticipated by Suzuki et al.

Claim 32 further requires retrieving, at the gateway, a command from the queue and transmitting the retrieved command from the gateway to an agent running on at least one of the remote devices. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 19-24 (Office Action page 3). The cited portion of Suzuki et al. provides "the client 200 is connected to the server 100 in the DOS environment... Simultaneously, the agent 12 is downloaded from the server 100 into the RAM 203." It should be apparent that if the agent 12 is being downloaded to the server 100 in this step, the step does not teach a command being transmitted to "an agent running on" the client 200 since the agent 12 is not yet running. Furthermore, this limitation requires a command to be retrieved from the queue and transmitted from the gateway, and in the cited portion of Suzuki et al. it is the agent 12 that is being transmitted. Applicants also assert that the broadest reasonable interpretation of "command" would not include the agent 12. Even if, *arguendo*, an agent is viewed as a command, to meet this limitation of claim 32 would require that the agent 12 be downloaded to itself. Thus, Suzuki et al. does not teach the limitation of retrieving, at the gateway, a command from the queue and transmitting the retrieved command from the gateway to an agent running on at least one of the remote devices.

Claim 32 further requires at the gateway, receiving a message from the agent reporting the results of the execution of the command. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 25-28 (Office Action page 3). The cited portion of Suzuki et al. provides "after booting, the agent 12 first accesses the managing record file 10 in the server 100. At this time point, nothing is recorded about the install execution state of the client 200. Then the agent 12 accesses the script file 11 in the server 100 and executes the setup commands..." This portion of Suzuki et al. does not teach that the agent 12, when accessing the managing record file 10, reports the results of the execution of any command. Rather, "nothing is recorded about the install execution state of the client 200." Thus, Suzuki et al. does not teach the limitation of at the gateway, receiving a message from the agent reporting the results of the execution of the command.

Claim 32 further requires placing the queue in a reboot status in response to the initiation of a reboot process. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 40-45 (Office Action page 3). The cited portion of Suzuki et al. provides:

> A reboot is requested during installation of the operating system. The agent 12 notifies the install execution state up to then to the manager 14 in the server 100. In response to this notification, the manager 14 records it into the managing record file 10 for updating. Simultaneously, the manager 14 sets the boot flag of the client 200 to 1 (local boot) for switching from the remote boot to the local boot (step S6).

This portion of Suzuki et al. does not mention the script file 11, which allegedly reads on the queue of claim 32, let alone placing the script file 11 into a reboot status. Thus, Suzuki et al. does not teach the limitation of placing the queue in a reboot status in response to the initiation of a reboot process.

Claim 32 further requires retrieving at the gateway a message from the agent indicating the completion of the reboot process at the remote device. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 46-49 (Office Action page 3). The cited portion of Suzuki et al. provides "[b]ased on the switching, the reboot is executed by the local boot in the client 200. At this moment, the agent 12 is again downloaded into the client 200 and booted again after the reboot." Here, Suzuki et al. does not teach a message from the agent 12 indicating completion of the reboot process, as required by claim 32. Thus, Suzuki et al. does not teach the limitation of retrieving at the gateway a message from the agent indicating the completion of the reboot process at the remote device.

Claim 32 further requires removing the queue from reboot status in response to the message, and checking at the gateway whether any commands remain in the queue that have not yet been completed. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 49-53 (Office Action pages 3-4). The cited portion of Suzuki et al. provides "[t]he agent 12 accesses again the managing record file 10 to detect the progressing state of installation in the client 200 and executes a continuation of the execution script S based on the detected progressing state to continue the installation (step S7)." Suzuki et al. does not here teach removing the script file 11 from a reboot status. There is also no mention of a response to a

message from the agent 12. Thus, Suzuki et al. does not teach the limitation of removing the queue from reboot status in response to the message, and checking at the gateway whether any commands remain in the queue that have not yet been completed.

For at least the reasons provided above, Suzuki et al. does not anticipate claim 32. Applicants therefore request that the Examiner withdraw the rejection of claim 32, and the rejections of dependent claims 33 and 36-38, under 35 U.S.C. §102(e).

Applicants note the further novelty of some of the dependent claims over Suzuki et al. For example, claim 33 further limits the method of claim 32 such that the queue is placed in the reboot status in response to receipt at the gateway of a message from the agent on the remote device indicating that the reboot process is in progress. The Examiner asserts that this limitation is met by Suzuki et al. at col. 8 lines 40-45 (Office Action page 4). This portion of Suzuki et al. as noted previously, does not mention the script file 11, nor placing the script file 11 into a reboot status. Suzuki et al. further does not teach placing the script file 11 into a reboot status in response to receipt of a message from the agent indicating that the reboot process is in progress. Thus, Suzuki et al. does not teach the limitation of placing the queue in the reboot status in response to receipt at the gateway of a message from the agent on the remote device indicating that the reboot process is in progress.

Claim 36 further limits the method of claim 32 to also include the step of updating the status of the queue to indicate the command that has been most recently transmitted to the agent for execution. The Examiner asserts that this limitation is met by Suzuki et al. at col. 10 lines 28-34 (Office Action page 4). This portion of Suzuki et al. provides "[i]n this case, since the record managing section 17 updates the record of the install execution state according to the install execution state and since the agent 12 implements the installation by referring to the record, even if there exists such a program requiring a reboot in the install file 13, the agent 12 can continue the installation after the reboot." This portion of Suzuki et al. does not teach updating the status of the script file 11 to indicate the command most recently transmitted to the agent 12. Thus, Suzuki et al. does not teach the limitation of updating the status of the queue to indicate the command that has been most recently transmitted to the agent for execution.

Claim 38 further limits the method of claim 32 such that the message indicating the completion of the reboot process at the remote device includes a report of the configuration of the remote device. The Examiner asserts that this limitation is met by Suzuki et al. at col. 9 lines 8-12 (Office Action page 4). Here, Suzuki et al. provides "[u]pon completion of all the application install image files 13b, a reboot is requested. Then, the agent 12 notifies the server 100 that all the installation has been finished. The manager 14 in the server 100 receives this notification and finishes the service (step S10)" This portion of Suzuki et al. does not teach a message including a report of the configuration of the client 200. Thus, Suzuki et al. does not teach the limitation of the message indicating the completion of the reboot process at the remote device includes a report of the configuration of the remote device.

Rejections under 35 U.S.C. §103(a)

Claims 34 and 35 depend from claim 32 and are therefore patentable over Suzuki et al. for at least the reasons provided above for claim 32. Claim 34 further limits the method of claim 33, depending from claim 32, such that the agent opens a new communication session with the gateway to transmit the message. Claim 35 further limits claim 34 such that the new communication session comprises a secure socket. The Examiner has taken official notice that the ability to begin a new communication session between a client and a server, and that the use of a secure socket, were well known in the art at the time of the invention. Applicants content that official notice is misapplied with respect to these claim limitations.

"Official notice *unsupported by documentary evidence* should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration* as being well-known." MPEP §2144.03(A) (emphasis added). The Applicants contend such instant and unquestionable demonstration is lacking. For example, in *In re Ahlert*, official notice was deemed proper with regard to adjusting the intensity of a flame in accordance with the required amount of heat. See *In re Ahlert*, 424 F.2d 1088 (CCPA 1970). In *In re Fox*, official notice was proper with regard to information on an audio tape being erased with new audio information is recorded over the previous information. See *In re Fox*, 471 F.2d 1405 (CCPA 1973). "It would not be appropriate

for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, *assertions of technical facts in the areas of esoteric technology* or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, at 1091 (emphasis added).

Here, the Examiner has made assertions of technical facts in an area of esoteric technology, namely, computer science, and the facts are not capable of instant and unquestionable demonstration as being well-known. Applicants respectfully request that the Examiner provide support by citations to references in any subsequent action if the rejections are to be maintained.

All pending claims are now allowable and Applicants therefore respectfully request a Notice of Allowance from the Examiner. Should the Examiner have questions, the Applicants' undersigned agent may be reached at the number provided.

Respectfully submitted,

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